NEW YORK CODES, RULES AND REGULATIONS

TITLE 10. DEPARTMENT OF HEALTH CHAPTER II. ADMINISTRATIVE RULES AND REGULATIONS SUBCHAPTER N. PROFESSIONAL MEDICAL AND DENTAL SERVICES PART 91. EXCESS LIABILITY INSURANCE POOL: PHYSICIANS AND DENTISTS

10 NYCRR § 91.4 (2002)

(a) The Superintendent of Insurance and the Commissioner of Health shall establish and monitor the hospital excess liability pool consisting of funds made available from payments by or on behalf of general hospitals of a portion of general hospital inpatient rates and the amount allocated to charge payors determined in accordance with section 91.3(b) of this Part and from payments by general hospitals determined in accordance with subdivision (e) of this section to reflect the cost of excess malpractice insurance coverage or equivalent excess coverage and for malpractice premiums subsequent to July 1, 1991 including funds made available pursuant to statute (see Chapter 266 of the Laws of 1991 and any amendments thereto).

(b) The pool administrator(s) designated by the Superintendent of Insurance and the Commissioner of Health shall receive funds for the pool and purchase a policy or policies for excess malpractice insurance coverage or equivalent excess coverage for eligible physicians and dentists in accordance with this Part or reimburse the hospital where the hospital purchases equivalent excess coverage for eligible physicians or dentists participating in a voluntary attending physician (channeling) program. The pool administrator(s) shall be reimbursed for reasonable and necessary pool administration costs, as deter-

mined by the Superintendent of Insurance and Commissioner of Health, from pool funds including investment income of the pool.

(c)(1) Prior to July 1, 1991 each of the major third-party payors (Medicaid and Insurance Law article 43 and Public Health Law article 44 corporations) shall contribute monthly to the hospital excess liability pool based on their proportionate share of the costs of excess malpractice insurance coverage or equivalent excess coverage as determined in accordance with this PArt.

(2) On and after July 1, 1991, Insurance Law Article 43 and Public Health Law Article 44 Corporations shall contribute monthly to the hospital excess liability pool based on their proportionate share of the costs of excess malpractice insurance coverage or equivalent excess coverage as determined in accordance with this PArt.

(d) Upon consultation with the Commissioner of Health or his designee, the Superintendent of Insurance or his designee shall notify general hospitals of payments to be made to the hospital excess liability pool by general hospitals for the amount allocated to charge payors reflecting the cost of excess insurance coverage or equivalent excess coverage certified to general hospitals pursuant to section 91.3 of this PArt. Each general hospital shall, subject to the approval of the Superintendent of Insurance, submit a check on the first of the month to the designated pool administrator for one-twelfth of the annual amount determined by the Superintendent of Insurance to be paid by the hospital, with the first payments to be submitted to the pool administrator no later than November 1, 1986, provided, however, that estimated payments of amounts due for patients discharged in a calendar month on or after October 1, 1991 must be made within 60 days of the end of each month unless

payment of actual amounts due for for such calendar months has been made within such 60-day period. The payments shall be based upon the general hospital's prior year costs, adjusted to actual cost upon determination of the amount allocated to charge payors in accordance with section 91.3 of this PArt.

(e) The cost of excess insurance coverage or equivalent excess coverage for each of the periods commencing on or after January 1, 1988 certified to a general hospital in accordance with section 91.3(a) of this Part, including costs of administering the pool for such periods, shall be compared to amounts paid or due by or on behalf of such general hospital to the pool for each such period in accordance with subdivisions (c) and (d) of this section. For each such period, any remaining underpayment shall be paid by the general hospital to the pool and any overpayment shall be returned by the pool to the general hospital to be returned to each major third-party payor pursuant to subdivision (g) of this section. Payments to the pool shall be made in accordance with the schedule established by the pool administrator.

(1) Any insurer issuing policies of excess coverage whereby such insurer, notwithstanding any provisions of the insurance law, may return to the hospital excess liability pool, in whole or part, the moneys received from the hospital excess liability pool for specified policy periods, upon a certification to the insurer by the superintendent of insurance that such moneys will be derived from the surplus of the insurer.

(2) To the extent funds available to the hospital excess liability pool are insufficient to meet the costs of excess insurance coverage or equivalent excess coverage for coverage during the periods July 1, 1992 to June 30, 1993, and annual periods beginning July 1st, thereafter,

allocated or reallocated to rates of payment applicable to state government agencies, each physician or dentist for whom a policy for excess insurance coverage or equivalent excess coverage is purchased for such period shall be responsible for payment to the provider of excess coverage of an allocable share of such insufficiency, based on the ratio of the total cost of such coverage for such physician to the sum of the total cost of such coverage for all physicians applied to such insufficiency.

(f) The Superintendent of Insurance and the Commissioner of Health shall conduct an annual audit of the receipt and distribution of pool funds.

(g) Any funds remaining in the pool after purchase of a policy or policies for excess insurance coverage or equivalent excess coverage shall be distributed proportionately to general hospitals on the basis of hospital contributions to the pool to be returned to each major third-party payor on the basis of its percentage of liability for the cost of excess insurance coverage or equivalent excess coverage.

(h) The pool shall be operated pursuant to a plan approved by the Superintendent of Insurance and the Commissioner of Health.

(i) If any hospital shall fail to timely submit checks in accordance with this section, the hospital shall have 30 days from date of receipt of notification to provide the required checks. Failure to submit the checks within this 30-day time period shall result in the withholding of 10 percent of the hospital's payments from all major third-party payors regulated pursuant to Subpart 86-1 of this Title until such time as the required checks are received by the pool administrator. Statutory authority: L. 1986, ch. 266, §§ 18(8) HISTORY: Added 91.4 on 4/15/92; amended 91.4 (a),(e) on 4/21/93.

11 USCS § 541(a) (2002). Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or

final divorce decree; or (C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.